

EXHIBIT D – Universal Service Administrator’s Petition for Limited Waiver of
47 C.F.R. §54.717(f) Regarding Audit Report Deadline

Federal Communications Commission

DA 02-482

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carriers Association, Inc.)	
)	
Petition for Limited Waiver of)	
47 C.F.R. § 54.702(f))	
Regarding Audit Report Deadline)	

ORDER

Adopted: February 28, 2002

Released: March 1, 2002

By the Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we grant the Universal Service Administrative Company (USAC) a limited waiver of section 54.717(f) of the Commission’s rules to extend the filing deadline by which USAC’s independent auditor must submit its draft audit report for the year 2001.¹ We find that good cause exists to extend the deadline by 45 days to permit USAC’s independent auditor to file the draft audit report for the year 2001 on or before April 15, 2002.

II. BACKGROUND

2. Under section 54.717 of the Commission’s rules, USAC is required to designate an independent auditor to examine its operations and books of account to determine, among other things, whether USAC is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse.² The independent auditor is required to submit a draft audit report to the Common Carrier Bureau audit staff within 60 days after the end of the audit period.³ Because USAC’s fiscal year is the calendar year, the draft audit report is due by March 1.

3. On July 26, 2000, USAC filed a petition with the Commission seeking a permanent waiver of this requirement, or, in the alternative, a rule change that would allow the

¹ *Universal Service Fund Administrator’s Petition for Limited Waiver of 47 CFR §54.717(f) Regarding Audit Report Deadline*, filed February 19, 2002 (February 2002 Petition). See 47 C.F.R. § 54.717(f).

² 47 C.F.R. § 54.717.

³ 47 C.F.R. § 54.717(f).

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independent auditor to file the draft audit report on or before April 15 instead of March 1.⁴ USAC explained that, because it closes its books in early February and its parent, the National Exchange Carrier Association (NECA), does not close its books until mid-February, the 60-day deadline leaves the independent auditor only two weeks to complete its draft audit report.⁵ USAC explained that meeting the March 1 deadline is extremely difficult because it provides the independent auditor with just two weeks to complete six financial audits and five program reviews.⁶ This short timeframe to complete the draft audit report has, in the past, resulted in the independent auditor submitting a timely but incomplete draft report.⁷ The Common Carrier Bureau determined that USAC demonstrated good cause to grant a limited waiver of the filing deadline to allow submission of the draft audit report for the year 2000 on or before April 15, 2001.⁸

4. On February 19, 2002, USAC filed a petition seeking a limited waiver of section 54.717(f) of the Commission’s rules for the 2001 draft audit report.⁹ In addition, USAC renews its request for a permanent waiver of section 54.717(f), or, in the alternative, a rule change that would allow the independent auditor to file the draft audit report on or before April 15 instead of March 1.¹⁰ In its February 2002 Petition, USAC states that the reasons set forth in its July 2000 Petition for waiver remain unchanged, and that a waiver of the deadline for the 2001 draft audit report should be granted on the same basis.¹¹

III. DISCUSSION

5. We grant USAC a limited waiver of section 54.717(f) and extend the filing deadline for the 2001 draft audit report by 45 days to April 15, 2002.

6. Generally, the Commission’s rules may be waived for good cause shown.¹² As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.¹³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on

⁴ See *Universal Service Fund Administrator’s Petition for Permanent Waiver of 47 CFR §54.717(f) Regarding Audit Report Deadline or, in the Alternative, for a Rule Change*, filed July 26, 2000 (July 2000 Petition).

⁵ July 2000 Petition at 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Federal-State Joint Board on Universal Service, Changes to the Board of directors of the National Exchange Carriers Association, Petition for Waiver of Section 54.717(f) of the Commission’s Rules and Regulations*, CC Docket Nos. 96-45 and 97-21, Memorandum Opinion and Order, 16 FCC Rcd 4715 (Com. Car. Bur. 2001).

⁹ February 2002 Petition.

¹⁰ February 2002 Petition at 4. See also July 2000 Petition.

¹¹ February 2002 Petition at 3.

¹² 47 C.F.R. § 1.3.

¹³ *WAT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

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an individual basis.¹⁵ Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹⁶

7. We find that USAC has shown good cause to grant an extension of the deadline imposed by section 54.717(f) of the Commission’s rules because such deadline does not afford the independent auditor sufficient time to complete its draft audit report. By allowing the independent auditor to submit the report on or before April 15, 2002, we ensure that the draft audit report is accurate and complete when submitted. We also find that no harm will result from permitting the independent auditor to submit the draft audit report on or before April 15, 2002. The Common Carrier Bureau’s audit staff, USAC, and the independent auditor will then review the draft audit report and comply with the other provisions of section 54.717. Finally, we conclude that it is in the public interest to grant USAC’s waiver because this report is intended to assist the Commission in determining, among other things, whether the Administrator is properly administering the universal service support mechanism to prevent fraud, waste, and abuse.¹⁷ By extending this deadline, we provide the independent auditor with more time to complete its work, thereby ensuring a complete and accurate draft audit report.

8. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 254 and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the waiver request filed by the Universal Service Administrative Company on February 19, 2002, is GRANTED to allow submission of the draft audit report for the year 2001 on or before April 15, 2002.

9. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Common Carrier Bureau

¹⁵ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ *WAIT Radio*, 418 F.2d at 1159.

¹⁷ 47 C.F.R. § 54.717.